IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 12 OF 2007
IN
WRIT PETITION NO. 533 /2006.

Noella Maria Gonsalves,
resident of Gonsalves House,
Near Chapel, Portais,
Panaji, Goa. .... Petitioner.

Versus

Shri Rajendra Patel,
Major, married,
Resident of Flat No.2,
1st Floor, Gonsalves House,
Near Chapel, Portais,
Panaji, Goa. .... Respondent.

Mr. V. Menezes, Advocate for the Petitioner.

Mr. B. A. Vora, Advocate for the Respondent.

CORAM: S. A. BOBDE, J.

DATE: 29th JUNE, 2007.

ORAL JUDGMENT:

The petitioner Noella Maria Gonsalves, has moved this petition for taking action for contempt against the contemnor/respondent Rajendra Patel for breach of undertaking given to this Court. The contemnor had preferred Writ Petition No.533/06 against the Order of the Administrative Tribunal, Goa in Eviction Appeals No. 1/2005 and 2/2005 and the impugned Judgment in Rent Case No. RENT/ARC/6/1992 and RENT/ARC/2/1994 dated 24.9.2004 of the Rent Controller. 5 On 9th November, 2006 the Contemnor filed a pursis duly signed by him and his

Advocate that he does not seek to challenge the impugned order and seeks leave to withdraw the petition. He further undertook to pay the arrears of rent and vacate the suit house within three months from that date. This undertaking was accepted by this Court on the same day and the Contemnor was permitted to withdraw the petition. Admittedly there is presently no grievance about the arrears of rent which is said to have been paid by the contemnor. However, there is no compliance with the undertaking to vacate the suit premises. The three months within which the contemnor undertook to vacate expired sometime in March, 2007 and the contemnor had not vacated the suit premises. Thereafter on the plea that his children were exam going, the contemnor was granted 15 days to vacate the premises by an order of this Court dated 12.4.07. Thus 15 days expired on 27.4.07. Inspite of that the contemnor did not vacate the premises and has not done so till date.

2. Notice was issued of this contempt petition on 4th May, 2007. After the contemnor was served, he sought adjournment on one pretext or the other, till the matter came up yesterday when he was represented by another Advocate from Bombay, who appeared in the present matter, that is Shri Vora. Advocate, Shri Vora, also sought to have the matter adjourned, but the request for adjournment was rejected, it having been made clear to the contemnor on the earlier occasion that no further adjournment would be granted.

3. Today the contemnor is present in Court along with his

Advocate. The contemnor has filed an affidavit in reply and has pointed out that he has preferred a revision application against the order of the learned Single Judge of this Court accepting his undertaking. Obviously, no such revision is maintainable. The learned counsel for the contemnor however prays that further time be may be granted to file a review petition instead. This is obviously a specious plea and does not deserve any consideration. The revision petition and the plea for giving time to file review petition is hereby rejected.

4. Strangely, the contemnor's defence to the contempt petition is that he was misguided by his previous advocate to file a pursis, asking for withdrawal of Writ Petition No.533/06 and that he would like to argue the petition again. This appears to be just another ruse to somehow extend the time and continue illegal occupation of the premises. It must be noted that the pursis is not only signed by the then Advocate of the contemnor, but also by the contemnor himself. The contemnor is 54 years of age and runs a hardware shop. It is not possible to accept his plea. He has clearly signed on the undertaking and he must be held to that undertaking. In any case today, as the matter stands, there is no order of any court, setting aside the undertaking given by the contemnor. This Court sees no reason to set aside that undertaking on the specious and dishonest plea put forth by the contemnor.

5. Mr. Menezes has relied on the judgment of the Supreme Court in ***Noorali Babul Thanewala v. K.M.M. Shetty and others,*** reported

in **(1990) 1 SCC, 259** in which the Supreme Court dealt with a similar situation. The judgment applies to the facts of the present case.

6. Therefore, in the circumstances of the case, the contemnor is guilty of civil contempt of Court for being in breach of the undertaking dated 9.11.06 accepted by this Court. It is however not sufficient to punish the contemnor. It is necessary, in the circumstances of the case to direct him to purge his contempt.

7. The contemnor is accordingly convicted and sentenced to pay a fine of Rs.5000/- within a period of four weeks from today, failing which he shall suffer simple imprisonment for a period of one month. He is also directed to deliver vacant possession of the premises to the Petitioner, within a period of two weeks from today, failing which the District magistrate, North Goa, is directed to evict the contemnor and all others who may be in physical possession of the property, if necessary, with police help and hand over vacant possession of the premises to the petitioner, forthwith. Order accordingly.

Misc. Civil Application No. 343/07, Stamp Nos. 1200/07 and 1201/07 accordingly stand disposed of.

S. A. BOBDE, J.

sl.